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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,047	12/13/2001	Andrew Y. Kim	MIT8288CON	8426

7590

06/17/2003

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EXAMINER

KUNEMUND, ROBERT M

ART UNIT

PAPER NUMBER

1765

DATE MAILED: 06/17/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/023,047

Applicant(s)

KIM ET AL.

Examiner

Robert M Kunemund

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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The Rejections

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 to 22, 34, 35 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chin et al.

The Chin et al reference teaches a method of creating a optical device. On a GaP substrate, graded layers are deposited by gas source molecular beam deposition. The graded layers have each have a different composition. After the first graded layer is deposited the temperature of deposition is decreased by at least 20°C. After the graded layers are deposited, the remaining layers of the device are deposited, note entire reference. The Chin et al reference

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differs from the instant claims in the temperatures of deposition and doping. However, in the absence of unobvious results, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable temperature of deposition in the Chin et al reference in order to prevent diffusion of the volatile element and use a dopant in order to create the desired electrical characteristics..

Claims 23-29 and 36 to 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chin et al in view of Chen et al..

The Chin et al reference is relied on for the same reasons as stated, supra, and differs from the instant claims in the specific device. However, the Chen et al reference teaches the layers above the graded layer and the use of aluminum in the graded layers. It would have been obvious to one of ordinary skill in the art to modify the Chin et al process by the teachings of the Chen et al reference to deposit specific layers in order to increase the activity of the grown device.

Claims 30 to 33 and 40 to 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chin et al in view of Chen et al..

The Chin et al and Chen et al references are relied on for the same reasons as stated, supra, and differ from the instant claims in the specific device. However, in the absence of unobvious results, it would have been obvious to one of ordinary skill in the art to determine through routine experimentation the optimum, operable device grown the graded layers in the Chin et al reference in order to increase the use of the graded layer structure.

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Response to Applicants' Arguments

Applicant's arguments filed April 2, 2003 have been fully considered but they are not persuasive.

Applicant's argument concerning the Chin et al reference is noted. However, while the reference does not teach growth at temperatures greater than 650°C, it is not so limited to exclude higher temperatures. Further, it would be obvious to one of ordinary skill in the art to operate at different temperatures.

Since the examiner maintains the rejection of claim 1 over the Chin et al reference all remaining claims remain rejected also, in view of applicants arguments.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

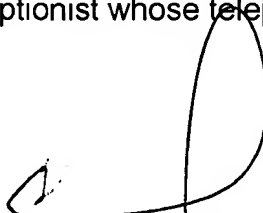
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M Kunemund whose telephone number is 703-308-1091. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ben Utech can be reached on 703-308-3636. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3599 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

RMK
June 13, 2003



ROBERT KUNEMUND
PRIMARY EXAMINER